



REMARKS

Responsive to the action dated November 7, 2002, applicants provisionally elects the invention of Group VII. The election is made with traverse. Claims 16, 19, and 20 have been amended to independent form. New claims 29 to 43 are supported by the original claims and the specification.

Applicants traverse the restriction between Groups VII, VIII and IX. Restriction is appropriate when inventions are "independent and distinct." 37 C.F.R. § 1.142. Applicants concur that the inventions of Groups VII, VIII, and IX are distinct, and accordingly non-obvious, with respect to one another. However, the inventions are not independent. MPEP 802.01 defines independent as follows:

The term "independent" (i.e., not dependent) means that there is no disclosed relationship between the two or more subjects disclosed, that is they are unconnected in design, operation, or effect . . . (emphasis added)

Indeed, the inventions here are connected in design or operation since a milk composition is used in each case. Moreover, the inventions are connect by effect since reduce airway inflammation and hyperactivity is reduced.

Applicants request examination of claims 16, 19, and 20 in their entire scope. Enumeration of the Der p 5 in Group VII is an identification of a species which may be used for initial examination pursuant to 37 C.F.R. 1.146 which states that the purpose of a species election is so that the examined claim would be restricted to the species "if no claim to the genus is found to be allowable." Applicants also request that pursuant to MPEP 806.04(d), that upon allowance of generic claims, all claims drawn to species be allowed. Moreover, searching all three species recited in claims 19 would not unduly burden the Examiner. MPEP 803.04 which asserts that "normally ten sequences constitute a reasonable number for examination purposes."

Attached is a marked-up version of the changes being made by the current amendment.

Applicant : Ching-Hsiang Hsu et al.
Serial No. : 09 877,160
Filed : June 8, 2001
Page : 5

Attorney's Docket No.: 12774-003001

Applicant asks that all claims be allowed. Enclosed is a One-Month Petition for Extension of time and a \$55 check for the Petition for Extension of Time fee. Please apply any other charges or credits to Deposit Account No. 06-1050.

Respectfully submitted,

Date: 1-7-03

Y. Rocky Tsao
Y. Rocky Tsao
Reg. No. 34,053

Fish & Richardson P.C.
225 Franklin Street
Boston, Massachusetts 02110-2804
Telephone: (617) 542-5070
Facsimile: (617) 542-8906

20588724.2.doc



Version with markings to show changes made

RECEIVED

JAN 16 2003

TECH CENTER 1600/2900

In the claims:

Claims 1-15, 17-18, 21-28 have been cancelled.

Claims 16, 19, and 20 have been amended as follows:

16. A method of treatment comprising:

administering [the milk of claim 9] a milk composition to a subject in a sufficient amount to reduce airway inflammation and hyperactivity in the subject, wherein the milk composition comprises a heterologous, non-milk allergen and a casein.

19. A method of treatment comprising:

administering [the milk of claim 13] a milk composition to a subject in a sufficient amount to reduce airway inflammation and hyperactivity in the subject, wherein the milk composition comprises a *Dermatophagoides pteronyssinus* allergen, and the allergen is a Der p 5, Der p 1, or Der p 2.

20. A method of decreasing the production of IgE in a subject exposed to an allergen, the method comprising

administering to a subject [the milk of claim 9] a milk composition comprising a heterologous, non-milk allergen, wherein the allergen is present in a sufficient quantity to induce in the subject tolerance to the allergen, the tolerance including suppression of allergen-specific IgE production in the subject upon subsequent exposure to the allergen.